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C O N F I D E N T I A L SECTION 01 OF 02 NICOSIA 002010

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TAGS: [PGOV](#) [PREL](#) [ECON](#) [CASC](#) [PHUM](#) [EUN](#) [UNFICYP](#) [TU](#) [CY](#)
SUBJECT: ECHR GIVES TENTATIVE BLESSING TO "TRNC" PROPERTY
COMMISSION

REF: A. NICOSIA SIPRNET DAILY REPORT (12/06/06)

[1](#)B. NICOSIA 959 AND PREVIOUS

NICOSIA 00002010 001.2 OF 002

Classified By: Ambassador Ronald L. Schlicher, reasons 1.4 (b/d).

[1](#)1. (C) SUMMARY. In a December 7 ruling on the Xenidis-Arestis case (reftels), the European Court of Human Rights upheld a Greek Cypriot claimant's ownership of her property in the closed city of Varosha and ordered Turkey to pay her over a million dollars in damages. At the same time, the ECHR "in principle" accepted the recently-established "TRNC" Property Commission as a local remedy for similar claims in the future. Turkey and Turkish Cypriots welcomed this decision, which might get Turkey off the legal hook in the roughly 1400 property cases currently pending before the Strasbourg court by transferring responsibility to Turkey's "subordinate local authority" -- and which confers unprecedented (if indirect and derivative) legitimacy on a Turkish Cypriot institution. Greek Cypriots are aghast at the prospect of being forced to seek redress from the "illegal occupation regime," and have suggested that the Court's ruling is a narrow one, devoid of implications beyond the Arestis suit. This ruling will not solve the property question -- which remains the most intractable part of the Cyprus problem -- although it may blunt the previously effective Greek Cypriot strategy of seeking redress through the courts rather than through a political settlement. END SUMMARY.

THE CASE

[1](#)2. (SBU) On December 7, the ECHR made its long-awaited ruling in the case of Myra Xenides-Arestis, who had sued the "occupying power" Turkey for violating her rights by denying her access to her property in the closed city of Varosha. In a preliminary 2005 ruling, the ECHR found in favor of Arestis and ordered Turkey (which had initially moved for dismissal of the case on the grounds that the "TRNC," not the GOT, was the governing power in the north) to provide relief to the plaintiff. But the Court acknowledged that the Turkish Cypriot administration, while not sovereign, was nonetheless a "subordinate local authority" of Turkey. The Court gave Turkey and the Turkish Cypriots three months to design an "effective local remedy" to the violation of the plaintiff's rights, and another three months to implement it. Only absent an effective local remedy could cases be referred to Strasbourg, they reasoned.

[1](#)3. (SBU) In response to this ruling, the "TRNC" (with significant prodding from the mainland) redesigned its Denktash-era Property Commission so that Greek Cypriot claimants could request compensation for -- and in certain

very limited cases restitution of -- their property in the north. In June 2006, just shy of the ECHR's six-month deadline, the "TRNC" Property Commission made its first offers. So far six Greek Cypriot claimants have accepted cash compensation, while three others have been allowed to reclaim their property outright. Arestis, however, turned down the Commission's million-dollar buy-out offer, demanding complete restitution of her property instead.

¶4. (SBU) The Court's December 7 ruling went generally in the plaintiff's favor. Absent an agreement with Turkey over whether she would accept a payoff in lieu of restitution, the ECHR reaffirmed that Arestis is still the legal owner of the property and awarded her over 900,000 euros in damages. Legal observers note that this decision does not officially close the Arestis case, since the pecuniary damages awarded only compensate the plaintiff for the violation of her rights until now; as long as she remains the legal owner and continues to be denied access to her property, the door remains open for Arestis to request further damages and relief. In a public statement just after the ruling, she suggested she would consider further court action as long as her property was not returned to her. The Court decided not to force Arestis to seek redress from the new Property Commission, as the Turkish side had asked, since initial rulings had already been made in Strasbourg regarding her case.

"PYRRHIC VICTORY"

¶5. (C) Of broader significance was the ECHR's finding that the Turkish Cypriot Property Commission nevertheless, "in principle," met the Court's 2005 requirements to be considered a "local remedy" for other, similar property cases. The Court also noted that the new law granted applicants the right of appeal to the "TRNC High Administrative Court." Although the Court has not said so

NICOSIA 00002010 002 OF 002

explicitly, many observers feel this means that most of the 1400-odd cases currently pending before the ECHR could be kicked back down to "TRNC" authorities for action at the local level, and heard in Strasbourg only when all on-island avenues for appeal had been exhausted.

¶6. (C) For the Greek Cypriots, the prospect of being forced to seek redress from the "TRNC" is politically unappetizing, to say the least. One pro-government paper breathlessly warned that the ECHR decision was an "ominous" step toward de facto recognition of the "pseudo-state," while another commentator bemoaned Arestis's "pyrrhic victory." More thoughtful observers are concerned, but have sought to minimize the importance of the ruling.

¶7. (C) Arestis lawyer Achilleas Demetriades has pointed out that the "TRNC" law places severe limitations on the amount of property the Commission can actually give back. (COMMENT: Restitution of a large majority of Greek Cypriot land in the north is effectively impossible, since most of this property is currently in use by either civilians or the military. In such cases, the Property Commission is only empowered to offer either delayed restitution, pending a solution to the Cyprus problem, or immediate payout -- which would not be acceptable to many claimants, like Arestis. END COMMENT.) While the Court may have accepted the Commission "in principle," Demetriades believes that time and further appeals will demonstrate that new Turkish Cypriot property mechanism cannot provide "effective" remedy in practice, as demanded by the ECHR in 2005. This argument could turn out to be especially strong if, as many expect, the Commission -- now over the "hump" of yesterday's decision -- begins to slow-roll or short-change other claimants.

¶8. (C) Turkish Cypriots, predictably, are crowing about the ECHR's "historic" decision and the legitimacy it confers

(albeit indirectly and conditionally) on a Turkish Cypriot institution. According to Asim Akansoy, "President" Talat's Private Secretary, the decision could help force Greek Cypriots to "deal with Turkish Cypriots as a legitimate presence on this island." Too often, said Akansoy, the GOC seeks to "ignore" the Turkish Cypriots and their concerns, "pretending instead" that the Cyprus problem is purely the result of mainland Turkish aggression.

¶9. (C) Some Turkish Cypriots are more cautious, however. One "MP" close to Talat acknowledged that the ECHR ruling could result in an uptick in the number of Greek Cypriot property applications (at least 80 had applied as of December 7). In order to prove it was indeed "effective," the Commission would have to process such claims reasonably quickly and fairly, he said. At the very least, this would involve significant payouts that the "TRNC" can scarcely afford. Although Turkey has said it would help foot these bills, he told us, it is an open question whether the GOT will be willing to do so if this involves writing hundreds or thousands of million-dollar checks. According to another Talat advisor, the Turkish Cypriots were quietly hoping that "political factors" (i.e., an unwillingness to deal -- or be seen dealing -- with a "TRNC" institution) would keep the number of Greek Cypriot applications for compensation/restitution to a manageable minimum.

COMMENT

¶10. (C) Although the ECHR decision will not solve the property question (which remains the most intractable and emotional element of the Cyprus problem) it may blunt what has heretofore been one of the Greek Cypriots' most effective political weapons -- litigation. Coming coincidentally on the same day as a local Supreme Court ruling that overturned the GOC's uncompensated expropriation of Turkish Cypriot land in Paphos, the Arestis ruling shows that property is an issue which cuts both ways. The USG and others interested in pushing the parties back to the negotiating table should use the growing number of complicated judgments that are now enmeshing each side as an argument for re-engagement in settlement talks. Only an overall political agreement can produce a comprehensive solution to property and other issues. END COMMENT.

SCHLICHER